

## 48A C.J.S. Judges § 329

Corpus Juris Secundum | August 2023 Update

### Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

### IX. Disqualification to Act

#### D. Objections to Judge and Proceedings Thereon

##### 3. Determination of Objection to Judge

## § 329. Disqualification as issue determinable on counteraffidavits

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Judges](#)  51(4)

**Where the disqualification of a judge may be put in issue, counteraffidavits may be filed disputing the asserted disqualification.**

Where the disqualification of a judge may be made an issue, counteraffidavits may be filed.<sup>1</sup> In some jurisdictions, it is required that a counteraffidavit be made by the judge<sup>2</sup> and not by an opposing counsel.<sup>3</sup> In the absence of such counteraffidavits, the facts set up in the application must be taken as true<sup>4</sup> although the judge's personal knowledge may be to the contrary.<sup>5</sup> The judge's unverified statements in rebuttal are of no weight in determining the question.<sup>6</sup>

### ***Time of filing.***

Counteraffidavits should be filed within the prescribed period before hearing.<sup>7</sup> The right to have the counteraffidavit filed before hearing may be waived.<sup>8</sup>

### ***Verification.***

Under a statute providing that a counteraffidavit shall be verified, a notarized affidavit is sufficient compliance with such requirement.<sup>9</sup>

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Footnotes

- 1 Cal.—People v. Wade, 150 Cal. App. 2d 281, 309 P.2d 841 (2d Dist. 1957).
- 2 Cal.—Ensher, Alexander & Barsoom, Inc. v. Ensher, 225 Cal. App. 2d 318, 37 Cal. Rptr. 327 (3d Dist. 1964).
- 3 Cal.—Bassford v. Earl, 162 Cal. 115, 121 P. 395 (1912).
- 4 Cal.—Oak Grove School Dist. of Santa Clara County v. City Title Ins. Co., 217 Cal. App. 2d 678, 32 Cal. Rptr. 288 (1st Dist. 1963).
- 5 Cal.—People v. Compton, 123 Cal. 403, 56 P. 44 (1899).
- 6 Cal.—Morehouse v. Morehouse, 136 Cal. 332, 68 P. 976 (1902).
- 7 Ariz.—Guberman v. Chatwin, 19 Ariz. App. 590, 509 P.2d 721 (Div. 1 1973).  
Cal.—Ensher, Alexander & Barsoom, Inc. v. Ensher, 225 Cal. App. 2d 318, 37 Cal. Rptr. 327 (3d Dist. 1964).
- 8 Cal.—Mercantile Trust Co. of San Francisco v. Sunset Road Oil Co., 173 Cal. 487, 160 P. 545 (1916).
- 9 Cal.—Ryan v. Welte, 87 Cal. App. 2d 888, 198 P.2d 351 (1st Dist. 1948).

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